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IN THE

Supreme Court of the United States

OCTOBER TERM—1948

No. 476

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER,

Petitioner,

—VS.—

ELIZABETH ELLIS DURR,

Respondent.

BRIEF OF RESPONDENT IN REPLY TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Question 1

Statement 2

Respondent's Contention 3

Statute Quoted 3

Comment on Petitioner's Reasons 5

Comment on Petitioner's Cases 7

Conclusion 22

Appendix, Housing and Rent Memo 51 23

Table of Cases

Alaska Steamship Co. v. U. S., 290 U. S. 256 15

Commissioner v. Gottlieb, 265 U. S. 310 14

Property Service Co. v. Spicknall, unreported 9, 13

Wilson v. Brown, 137 F. 2d 348 16

Woods v. Cammett, 80 F. Supp. 636 ..... 7, 10, 13

Woods v. Hillcrest, 170 F. 2d 980 20

Woods v. Palumbo, 79 F. Supp. 998 ..... 8, 10, 16

Woods v. Seaton, unreported 20

Woods v. Taper, 79 F. Supp. 984 ..... 7, 9, 10, 20

Statutes Cited

PAGE

Housing and Rent Act of 1948 (PL. 464) 1, 3, 16

Housing and Rent Act of 1947 (PL. 129) 18

Rule Cited

Rule 38 U. S. Supreme Court 21

Miscellaneous

Housing and Rent Memo No. 51 ..... 9, 17, 23

Questions and Answers about Evictions 19

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Petitioner,

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[Decision below reported in 170 F. 2d, page 976]

Question Involved

The petition in this case seeks a review of a decision by a U. S. Court of Appeals that if a landlord intends in good faith to take leased housing premises out of the rental market for the duration of the statute involved, he may do so under an amendment contained in the Housing and Rent Act of 1948; that it is immaterial that his reason is a desire to sell to a buyer who intends to use it for a home; and that the amendment itself bars the property from being re-offered for rent during the life of the law.

The full text of the amending paragraph in question is quoted on page 8 of the petition, and in its appendix on page 25, where its citation is given, and also on page 3, *infra*.

The language of petitioner in presenting the question is not quite accurate, for it omits the vital requirement of

the statute (Sec. 209(a)(5)), that the withdrawal from the rental market is to be permanent, as indicated by the concluding statutory words "shall not thereafter be offered for rent".

Statement

The "Statement" of the petition is much more extensive than necessary. A more concise statement is given in the opinion below (R. pp. 40 and 41). All of the statement in the petition other than first and last paragraphs could have been condensed as follows:

The tenant is holding over under federal law after the expiration of a written lease. For over three years, respondent has been endeavoring to sell the premises because she is threatened with losing them under foreclosure of an overdue $8,000 mortgage. She has been unable to secure a contract of sale for the stated reason that the tenant would not permit prospective buyers to make a satisfactory inspection of the premises (R. p. 24, line 1; p. 24, last par.; entire p. 25).

For that reason, and because she has to sell, and cannot sell with the tenant in possession, she must proceed under paragraph (5) and so has limited her negotiations since the passage of the 1948 amendment to prospects who desire occupancy for themselves (petition p. 5 first par.). She gave notice under the statute in April, 1948, to vacate July 1, and on the tenant's failure to surrender possession instituted the ejectment suit in the State Court which has been restrained by the action now under review.

The quotations from respondent's bill of particulars and affidavit, summarized on pages 3 to 5 of the petition, are unnecessary here, but were obviously necessary in the ejectment suit in the State Court. She had to prove that

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her intention to withdraw the premises from the rental market was in good faith, by showing she proposed to sell only to a prospective occupant, and that she did not intend by indirection to restore the premises to the rental market. The evidence at the trial quoted in the middle paragraph on page 5 of the petition was obviously for the purpose of showing in the U. S. Court the same good faith.

Petitioner's statement that the trial court "upon its own motion" struck out that testimony is inaccurate. The plaintiff himself had previously moved to strike out all that evidence (R. p. 14, first par.).

Respondent's Contention

The Federal Housing and Rent Act of 1948 became effective April 1, 1948. Sections 204* (c) and (d) of the 1948 act amend portions of Section 209 (a) of the Act of 1947 in the following words:

> "(c) Section 209 (a) (5) of such Act, as amended, is hereby repealed.
>
> "(d) Section 209 (a) of such Act, as amended, is amended by adding after paragraph (4) thereof two new paragraphs to read as follows:
>
> (5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or
>
> (6) * * *."

---

* Congressional Service—1948 Pamphlet No. 4, page 722 at 728; Bound Volume, p. 128 at 134; (Chapter 161—P. L. 464—S. 2182).
(U. S. C. A. Title 50 War Appendix, Cumulative, pocket part for 1949, Sec. 1899 pages 620-621; 62 Stat. 98).

On its face that seems to cover the present case.

Petitioner contends it has not the broad meaning it seems to have, but is limited by paragraph (3). (Petition p. 24 for full text.) The issue therefore is purely one of statutory interpretation.

For a clear, comprehensive and convincing statement of the proper interpretation of this new paragraph, respondent can do no better than to rely on the entire opinion of the Court of Appeals (R. pp. 40 to 46). (Now reported in 170 F. 2d, p. 976.)

Respondent's position may at this point be briefly, though not as effectively, stated as follows:

The new paragraph (5) obviously was intended to enlarge the grounds under which a hold-over tenant could be evicted. Presumably it means what it says, viz: that if a landlord intends to remove the premises from the rental market for the duration of the statute, he may do so. There are no conditions imposed; his actuating reason is unimportant; the only requirement is proof of good faith. To prevent bad faith, the last clause contains a prohibition,

> "and such housing accommodations shall not thereafter be offered for rent as such."

That prohibition is not limited to the evicting landlord. It is all inclusive. The good faith obviously refers to the positive intention that the premises are to be taken out of the rental market, and kept out.

This paragraph is therefore very different in purpose from paragraphs (2) and (3).

In those earlier paragraphs there is no prohibition against the premises being again put back in the rental market, provided the personal occupancy there stipulated has continued long enough to prove the good faith of the eviction. The occupying owner may die or be compelled to

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move to another city or state, and he or his heirs could then relet the premises. But that would not be possible in case of eviction under paragraph (5); so it is clearly to the advantage of a landlord wishing to sell to proceed under (3) if, while the tenant is still in, the owner can get a contract in writing from a prospective purchaser wishing personal occupancy. A landlord would never resort to (5) if he could proceed under (3). But if for any reason he cannot secure a written contract, he has to allow his premises to remain under tenancy unless he can resort to the new paragraph (5).

Congress in enacting the new (5) was necessarily aware that in many cases a buyer wishing personal occupancy would refuse to bind himself by contract while a tenant is in possession. Among other reasons, he could not tell how soon he could get possession, and time might be important. So there was an obvious reason for Congress to extend protection to landlords under conditions such as the present. Its failure to do so would in such cases as the present actually nullify the provision of the new Sec. 302 of the 1948 Act that no owner shall be required "to offer any housing accommodations for rent" (Pet. p. 26).

Therefore paragraphs (3) and (5) cover different angles of the same problem; the after results of each are entirely different; and there was an obvious reason why Congress should intend the new paragraph to mean just what it says.

Comment on Petitioner's Reasons

In the first paragraph of petitioner's statement of his reasons for seeking review (top of p. 7), he says the previous system of eviction control "was incorporated, with modifications, into the" 1947 act. In fact, the price control act and its administrative regulations had died, and the new

act incorporated only *some* of those administrative regulations.

The new act denied the right to control evictions by regulation, by limiting the right to issue regulations and orders to Section 204 and 202 (c).

> (Sec. 204 (d), U. S. C. A., Title 50, War Appendix, Cumulative Pocket Part, for 1948, Sec. 1894, p. 503, for 1949, p. 613) (Act June 30, 1947, Chap. 163, Title II Sec. 204 (d), 61 Stat 197, U. S. C. Cong. Serv. 1947, p. 205),

and specified the form of eviction control by law in Sec. 209.

> (Same pocket part for 1948, Sec. 1899, p. 505 for 1949, p. 620, as amended) (Same Act, Sec. 209, 61 Stat. 200, 62 Stat. 98, as amended, U. S. C. Cong. Serv., 1947, p. 207, 1948, p. 134).

In the same paragraph in stating the substance of the new paragraph (5) he abbreviates too much. A short statement of that paragraph is not accurate unless it indicates that the withdrawal from the rental market is intended in good faith to be permanent.

Under the heading 1, page 8, he incorrectly paraphrases paragraph (3), which he says "requires the existence of a prior contract of sale in order to insure a *bona fide* purchase for personal occupancy before any eviction". In fact, paragraph (3) is only an extension of the privilege under paragraph (2) of securing occupancy by the owner. Paragraph (3) does not prevent a sale of the premises; and when a sale has been consummated, the buyer, under paragraph (2) can start eviction proceedings if he desires personal occupancy. Paragraph (3) simply expedites the time when such a purchaser can secure possession, by providing that as soon as the buyer has signed a written con-

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tract for purchase, the *seller* can immediately give notice under paragraph (3), instead of everyone waiting until the sale is completed, when the purchaser himself would give the notice.

In his next sentence (p. 9), petitioner misstates the purpose of paragraph (5). Neither the respondent nor the courts below claim that paragraph (5) "encompasses eviction for purposes of sale". Respondent contends and the courts below held that this paragraph encompasses eviction for the purpose of permanently withdrawing the premises from the rental market, whatever the occasion for such withdrawal. And the prohibition of the last clause is a much more effective bar against restoring the premises to rental than any condition in paragraphs (2) or (3).

Comment on Cases Relied on in Petition

In the next paragraph (p. 9), petitioner begins with a quotation from the decision of the U. S. District Court of the District of New Hampshire in the case of *Woods* v. *Cammett,* 80 F. Supp. 636. Before commenting upon that decision, it is important to refer to prior U. S. District Court cases on which the New Hampshire decision was based.

The first case involving paragraph (5) was *Woods* v. *Taper,* 79 F. Supp. 984, in the U. S. District Court for the southern district of California. In that case, a group of landlords served several notices demanding possession, under paragraph (5). The conclusions of the court (par. 2(e) p. 987), and the preliminary decree (par. 5, not reported, quoted on page 35 of the brief filed by the petitioner on October 4 in the court below), referred to various janitorial services and indicate clearly that some at least of the premises in question were apartment houses. It is

evident that the owner of an apartment house could not intend in good faith to have that building permanently removed from the rental market. The owners did not contest the rule to show cause for temporary injunction, and on the return day the hearing was adjourned one day, presumably to permit the attorney for the Housing Expediter to submit proposed findings and judgment. The actual findings and judgment follow so closely the argument of the petitioner in the present case that it is a fair inference they were prepared by the plaintiff's attorney; and that since the case was uncontested, and the application was only for an injunction pendente lite, the judge did not give careful study to the reasons expressed in the papers, and accepted and signed them as submitted to him. This judgment was entered July 27, 1948.

The next case to be decided was that of *Woods* v. *Palumbo*, 79 F. Supp. 998, in the U. S. District Court for the middle district of Pennsylvania. In the opinion in that case, dated September 17, it appeared that the premises was a two family house and that the defendant testified if he was unable to sell the property as it stood he intended to convert it from two into four apartments (p. 999). It is therefore perfectly clear that he could not have intended in good faith to have the property permanently removed from the rental market. In fact counsel for the defendant argued (p. 1000, (4)) that while the owner obtaining possession under paragraph (5) could not restore the premises to the rental market,

> "the one he sells the property to, may do so."

The judge properly stated (same paragraph),

> "such construction would defeat the purpose of this legislation."

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Counsel for the plaintiff therein laid before the court housing and rent memorandum number 51 (p. 1001, par. (6)), together with the case of *Woods* v. *Taper* (p. 1001, footnote 4). The judge, undoubtedly incensed at the above argument of the defendant's counsel, instead of basing his decision on the obvious fact that there was no honest intention of permanently removing the premises from the rental market, followed the findings and conclusions of the *Taper* case.

The present case was almost simultaneous with the *Palumbo* case. The final hearing in the presest case was on September 17 (R. p. 17), the date of the opinion in the *Pennsylvania* case; and the findings and judgment were entered September 20 (R. pp. 29-31).

The next case was that of *Property Service Company* v. *Spicknall* (not reported), in the People's Court of Baltimore City, in which the opinion was filed September 22. The wording of the opinion in that case follows closely the argument of the petitioner here and it cited the *Taper* case and stated

"where the similar facts existed as in the instant case."

(The above quotation is not included in the extract from the case found on pp. 18 and 19 of the petition, but the entire opinion of the case was set up on pp. 72a to 78a of the Expediter's brief of October 18, before the court below, and our quotation is taken from p. 77a of that brief.)

It is perfectly obvious from the whole opinion that if the premises in the *Baltimore* case was a single family house, then the distinction between that and the *Taper* case was not pointed out to the court. It is equally obvious that an inferior state or city court would feel bound by a cited decision of a U. S. District Court on a question of federal law.

The next case in chronological order is that of *Woods* v. *Cammett,* 80 F. Supp. 636, quoted in the petition. In that case the opinion (p. 637) points out that an order or judgment had been entered on September 27, 1948, in a municipal court, directing the tenant to vacate, and the suit of the Housing Expediter was thereupon commenced on September 30 (p. 638). It also appears from the opinion that both the *Taper* and *Palumbo* cases were cited to the district court judge (p. 639), and that the instant case of *Woods* v. *Durr* was not cited to him, nor was the pendency of the present case in the U. S. Court of Appeals for the Third Circuit, nor was it pointed out that both the cited cases involved multi-family premises. The notice of appeal in our case was dated and filed September 28, but the Government failed to advise the judge in New Hampshire of that fact, for he said in his opinion (p. 639),

> "No appellate review involving the issue has come to my attention * * *."

After citing the *Palumbo* and *Taper* cases he continued (p. 639),

> "The facts therein are similar to those in the instant case."

Obviously the vital difference in facts had not been pointed out to the New Hampshire judge when he filed his opinion on October 19. The portion of the opinion quoted in the petition follows so closely the arguments of the petition that it is clear the plaintiff had supplied a brief based on the same argument here made, and that neither the judge nor the opposing counsel were aware that anyone else had raised the points or reasons so well summarized in the opinion of the Court of Appeals in the present case.

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On p. 9 the petition quotes from the *Cammett* case

> "withdrawing * * * from the rental market * * * for the purpose of sale, defeats in some measure the aim of rent control legislation. * * * The property is held vacant for a time uncertain * * *."

The property might be held vacant for an uncertain time after eviction under paragraphs (2) or (3). And the argument disregards the fact that home ownership is at least as important to the public welfare as occupancy by tenants; and that when the property is sold to a home owner, it is the very sort of permanent withdrawal from the rental market intended under paragraph (5).

The error in the next assumption in the quoted portion of the New Hampshire opinion has already been referred to in connection with the petition (*Supra*, pp. 4-5).

The petition (pp. 9 and 10), quotes from the New Hampshire opinion

> "Obviously few landlords would resort to subsection 3 with the conditions there imposed in order to sell, when they could obtain the same results of sale under subsection 5."

That statement would not have been made if the distinction in the results under paragraph (3) had been compared with the results under paragraph (5). (See pp. 4-5, *supra*, and the opinion below, R. p. 42, last par.). (Now reported in 170 F. 2d, p. 976.)

Under paragraph (5) an owner must serve the notice of intention to remove the premises from the rental market; but under the last clause of the paragraph the premises cannot again be offered in the rental market, either by him, or by any succeeding owner. However in case of eviction of a

tenant under either paragraph (2) or under paragraph (3), if the owner under paragraph (2), or the buyer under paragaph (3), does intend in good faith to occupy the premises personally, and does so, then if later his circumstances so change that he is obliged to move from the premises, there is no bar against the premises being reoffered for rent, either by him or by any subsequent purchaser. When that distinction is understood it is obvious that no owner will resort to paragraph (5) if he can possibly proceed under paragraph (2) or (3).

The next sentence quoted from the New Hampshire opinion states that

> "a better price would be realized from vacant property as compared with that which is occupied."

That does not follow if the vacant property is subject to a requirement that it cannot be rented; but even if a better price could always be realized from vacant property, still it is not clear why any public policy expressed in this legislation should require that an owner sell his property at a less price than he could obtain under favorable conditions.

In the paragraph following the end of the quotation, in attempting to answer the view of the Court of Appeals that the last clause of paragraph (5) was binding on the property, the petition says

> "it is highly unlikely that subsequent owners would either know or feel themselves bound by the original landlord's action in evicting the prior tenant under paragraph (5)."

If the statute is binding on the property, as contended by the respondent and as decided by the Court of Appeals, it

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would be immaterial whether subsequent owners *felt* themselves bound; and if while rent control remains in force subsequent owners do not take the trouble to find out how possession was acquired, they would have no one to blame for the consequences but themselves.

In the next sentence, at the foot of page 10, petitioner cited both the *New Hampshire* case and the *Baltimore* case as holding that

> "the new purchaser • • • not being bound by the former owner's affidavit, could offer the property for rent contrary to the terms of the Act."

For the reasons already discussed, neither of those cases, which were decided without knowledge even of the existence of the present case, can have any authority on the binding effect of the last clause in the new paragraph (5), as against the clear reasoning of the Court of Appeals after a full argument on both sides.

The next page talks of the "protective requirement of paragraph (3)." That *protective requirement* is not nearly so protective as the protection afforded by the last clause of paragraph (5). And if the landlord sells to a purchaser intending to use the house personally, what added protection would be afforded by a prior bona fide contract?

In the next paragraph petitioner asserts that the alleged advantages already mentioned would

> "enable him to exert greater pressure on a tenant to pay rents above the ceiling."

No agreement to pay rent higher than allowed by the present law can possibly be valid, no matter how much pressure the landlord attempts to exert.

The next paragraph (p. 12), states that the interpretation by the court below will have the effect of destroying in large part the protective safeguards established by paragraph (3). But it is perfectly obvious that one, if not the principal, reason for the introduction of the new paragraph (5) in the 1948 amendment was to cover just such a case as the present one, where the owner proposes sale to a purchaser for personal occupancy (which is certainly more in the public interest than the encouragement of tenancies), but cannot do so while the premises are occupied by an obstructive tenant. And the new paragraph provides a much more effective safeguard against subsequent high rental than anything in paragraph (3), by permanently prohibiting subsequent rental *at any price.*

The next paragraph of the petition distorts the view of the court below in respect to the effect of the 1948 addition. None of the cited principles of construction are applicable when the language of a new amendment is so clear on its face; and any amendment obviously is intended to make *some* change in the previous law.

See *Commissioner* v. *Gottlieb,* 265 U. S. 310.

This was a case where it was argued that one of related acts should be construed as modified by another. The court said (p. 312),

> "The lower court was right in holding that the acts are *in pari materia*" • • •

(page 313)

> "The case • • • is one of peculiar and distressing hardship and it is not unnatural that any appropriate canon of construction should be laid hold of to justify a conclusion favorable to the respondents. But if the

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plain words of the statute are against such a conclusion, leaving no room for construction, the courts have no choice but to follow it, without regard to the consequences."

Citing *Chung Fook* v. *White,* 264 U. S. 443; and other cases, and at p. 314

"• • • the result we have stated necessarily follows from the plain words of the law, for which we are not at liberty to substitute a rule based upon other notions of policy or justice. That aliens from one part of the world shall be admitted according to their status, and those from another part according to fixed numerical proportions, is a matter wholly within the discretion of the lawmaking body, with which the courts have no authority to interfere.

Reversed."

See also *Alaska Steamship Co.* v. *U. S.,* 290 U. S. 256, 1933. In that case Mr. Justice Stone, speaking for the court said (p. 264),

"The rulings of the Comptroller General rest upon a proposition so plainly contrary to law and so plainly in conflict with the statute as to leave them without weight as administrative constructions of it."

Both these cases were cited by counsel for defendant in the *Palumbo* case above mentioned (p. 8) (See 79 F. Supp. p. 1000), but were ignored by that court in its opinion.

Petitioner's reference in the same paragraph to the amendment in case of cooperatives is without foundation.

because the type of cooperative referred to in that amendment (Petition p. 23, fifth line from bottom) expressly comprises "proprietary leases", even to those who are stockholder tenants, and therefore such apartments could not be removed from the rental market, and could not possibly come under paragraph (5).

The predecessor of the new paragraph (5) was not section (4) (d) of the act of 1942 as stated on page 13, under heading "2" of the petition. That section was the predecessor of section 302 in the act of 1948, as pointed out later in the petition (p. 15).

The quotation from the case of *Wilson* v. *Brown* on page 13 of the petition, that a landlord may evict if he

> "seeks in good faith not to offer the housing accommodations for rent"

precisely describes the actual situation in the present case. The following sentence from that quotation would also exactly describe the present case if a slight addition were made at the end so that it would read,

> " 'the landlord is thus free to occupy the property himself or devote it to some commercial enterprise or utilize it in any other way' *such as a sale to an intending occupant.*"

When the provisions of the 1947 act and the 1948 act are construed as pointed out in the foregoing pages, their provisions are completely harmonized. It is only when the provisions are distorted, as they are in the petition, that there is any conflict or overlapping.

The petition on page 14 discusses administrative regulations "having the force of law", and later page 16 refers to its own administrative interpretation of the present act.

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In the middle of page 15 is a statement with which respondent agrees:

> "Paragraph (5) • • • was intended to make it clear that a person seeking to use his property as permitted by Sec. 302"

(that is to take it out of rental and *permanently* devote it to owner occupancy)

> "could lawfully evict a tenant for that purpose."

At the foot of page 16, he quotes a part of Housing and Rent Memo No. 51, as amended October 25, 1948, after the decision below. The language as there quoted is somewhat different from the original memo of May 25, as he presented it to the court below, and as it is quoted in the Palumbo opinion footnote (79 F. Supp. p. 1001). Although the substance of the *quoted* part is somewhat transposed in the amendment, the meaning is substantially the same. But in the Housing Expediter's brief submitted to the court below on October 4, on the return of the rule when the order was made fixing October 18 for final hearing (R. p. 39), he quoted as Appendix B on pages 22 and 23 a complete copy of this memo. In his brief submitted October 18 on final hearing, he suppressed the latter part of the memo, and on pages 16 and 17 of his present petition, he quotes none of that omitted portion.

Since the omitted portion is quite important, and since it seems to respondent to be inconsistent with the quoted portion, respondent includes the entire memo as contained in the Expediter's brief of October 4 by way of an appendix, pp. 23-25, *infra*.

Regardless of whether the omitted portion is inconsistent with the quoted portion, by taking the position that

rental housing can be shifted to commercial rental without objection, petitioner destroys his argument (p. 9) that

> "The Act was designed to facilitate to the utmost the full and constant use of all available housing accommodations."

and also destroys similar arguments found on the same page, and elsewhere in his petition.

This argument of petitioner is also contradicted by the express wording of the Housing and Rent Act of 1947 which reads:

> Sec. 201 (b) "The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents • • • •"
>
> Sec. 201 (c) "To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted."
>
> (U. S. C. A. Title 50, War Appendix, Cumulative Pocket Part, for 1948, Sec. 1891 p. 501, for 1949, p. 609);
>
> (Act June 30, 1947, Chap. 163 Title II Sec. 201, 61 Statute 196, U. S. C. Cong. Serv. 1947, p. 203).

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When respondent's attorneys were first informed of this memo, they were told it was a confidential memo and could not be shown to us, and although it was exhibited to the judge of the District Court on the hearing before him, respondent's attorneys were unable to secure a copy of it until they were furnished with the brief of October 4.

In commenting on this memo, on page 26 of the brief submitted to the court below on October 18, the following language was used by the Petitioner:

> "Under the power conferred upon him by the act, the Expediter *has determined* * * *. It is submitted, therefore, that the interpretation should be held of 'controlling weight' and given effect."

The court below very properly answered that contention in its opinion (R. top p. 46) by pointing out that the power to issue regulations given him by the act was limited to Section 202 (c) and 204,

> "and did not extend to evictions, the subject of Section 209. The interpretation is, therefore, in no sense binding upon us and since it is in manifest conflict with both the statutory and the congressional intent we cannot follow it."

Moreover, the Expediter has consistently avoided informing any of the courts of a bulletin issued by his office in April entitled:

> "Questions and Answers About Evictions
>
> Under the Housing and Rent Act of 1947, As Amended
> April 1, 1948"

and bearing the serial number

"Form D-303-E
(4-48)."

On the first page of that bulletin appears the following:

"2. Q. What are the eight grounds for eviction? A. The following are the only grounds for eviction stated in the Housing and Rent Act of 1947 as amended:"

• • • • •

"5. If the landlord seeks to withdraw the housing accommodations from the rental market. Such accommodations cannot thereafter be rented as such."

So petitioner by Memorandum No. 51 repudiates his first interpretation.

On page 17, petitioner admits this is the first appellate ruling on the question here involved. All four District and City Court decisions mentioned on the balance of that page have already been sufficiently discussed. The petition concedes, page 19, that there is no clear conflict between the decision below, and that in *Woods* v. *Hillcrest* (now reported in 170 F. 2d, p. 980, cited on page 19 of the petition). The discussion of the *Hillcrest* case on that page in the petition convinces respondent that it is wholly consistent with the decision below. The remand for proof as to actual bad faith would be proper in any case where there had been no proof, and certainly where there had been no proofs at all, as on a motion to dismiss a complaint.

The footnote on the bottom of page 17 indicates that on final hearing in the *Taper* case, there must have been a decision following our case, and he expressly states in the same footnote that the *Seaton* case in the Eastern District

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of Virginia directly followed the opinion now under review. The Expediter states in that footnote he has taken an appeal from each of those cases.

He, therefore, indicates that all the decisions rendered since the present one became known followed the decision in this case; and until he can cite a contrary decision in some other circuit, he has no legitimate basis for asking a review of the present one.

Petitioner (on p. 19) further cites 14 cases now pending in various trial courts, as evidence of the importance of this case.

It is certainly evidence that petitioner is trying very vigorously to deter landlords from making any use of the new paragraph, and in our opinion that he is trying to repeal it by obstruction.

Rule 38, paragraph 5, of the rules of this court provides that a review on writ of certiorari

> "will be granted only when there are special and important reasons therefor,"

and the only one of the reasons mentioned thereafter in subdivision (b) which could possibly apply here is where the court below

> "has decided an important case of federal law which has not been, but should be, settled by this court."

It is certainly doubtful whether the question in this case is such an important one; but in view of the clear and comprehensive decision below, there is no apparent reason why it should be settled by this court unless and until the Court of Appeals from some other circuit should render a decision in conflict with the decision involved in this petition.

It certainly is unreasonable that the present respondent should be further delayed, at the risk of losing her property entirely, from proceeding under the judgment below. She has already been delayed since September 10, and it is common knowledge that the value of old dwellings is falling steadily. And since the only two cases cited by petitioner which were decided after the present decision of the Court of Appeals (November 8), followed it, as stated in the footnote on page 17 of the petition, and disregarded all the earlier decisions cited by the petitioner, it seems unlikely that any other Circuit will conclude that the present decision is erroneous.

CONCLUSION

The decision below is clearly sound, and respondent respectfully submits that the petition for certiorari should be denied.

Respectfully submitted,

MARTIN & REILEY,
Attorneys for Respondent.

J. H. THAYER MARTIN,
Of Counsel.

January 28, 1949.

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[Copied from pp. 22 and 23 of brief filed by petitioner with the court below on October 4, 1948.]

APPENDIX B

OFFICE OF THE HOUSING EXPEDITER
Washington 25, D. C.

May 25, 1948

Housing and Rent Act Memorandum No. 51

To: All Regional Housing Expediters
All Regional Attorneys
All Area Rent Directors
All Area Rent Attorneys

FROM: B. W. Diggle
Deputy Housing Expediter, Rent Operations
Robert A. Sauer
Assistant General Counsel, Regulations and Appeals Branch

SUBJECT: Section 209(a) (5) of the Housing and Rent Act of 1947, as Amended. Evictions for the Purpose of Withdrawal from the Rental Market.

To Secure Vacant Possession for Purpose of Sale.

Section 209(a)(5) permits eviction where "the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, . . .". Since this is only one of several grounds for eviction under the Act, it is clear that it was not intended that this section

should broaden or defeat the purpose of limitations placed in the other grounds. It follows, therefore, that since Section 209(a)(3) provides for eviction where "the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;" Section 209(a)(5) may not be used in cases where sales are involved. That is to say, since a tenant may be evicted for occupancy by a purchaser under Section 209(a)(3), a landlord may not evict under Section 209(a)(5) for the purpose of obtaining vacant possession in order to sell.

Section 206(b) of the Act authorizes the Housing Expediter to seek injunction against violations of the eviction provisions and consequently, any violations of the eviction restriction referred to above may be referred to Litigation for appropriate action.

To Rent for Commercial Purposes.

The Housing and Rent Act of 1947, as amended, continues to place in the local courts jurisdiction over eviction cases brought pursuant to Section 209(a). It is anticipated that the area and regional offices will receive inquiries in connection with the interpretation of Section 209(a)(5) dealing with specific problems which will arise in connection with evictions for the purpose of withdrawing from the rental market in order to rent for commercial purposes. In this respect, it is our policy not to issue either a general interpretation or interpretations dealing with specific cases. Consequently, inquiries written or oral should be answered by referring the parties to Section 209(a)(5) and to any other subsections of 209 that may be appropriate with the

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statement that the jurisdiction to determine such evictions is in the local courts.

Since no interpretation is being issued in connection with withdrawal from the rental market for the purpose of renting commercially, it will not be the policy of the Housing Expediter to intervene in cases where eviction is sought for this purpose, provided that the landlord complies with the notice requirement of the Act.

If, however, the landlord after obtaining eviction under Section 209(a)(5) thereafter offers the property for rent as housing accommodations, this would clearly be in violation of the Act and may be referred to Litigation for appropriate action.